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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

THE PEOPLE,

Plaintiff and Respondent,

v.

LAUREN WALP,

Defendant and Appellant.

B268593

(Los Angeles County
Super. Ct. No. BA431902

APPEAL from an order of the Superior Court of
Los Angeles County, Henry J. Hall, Judge. Reversed.

Lenore De Vita, under appointment by the Court of Appeal,
for Defendant and Appellant.

Kamala D. Harris, Attorney General, Gerald A. Engler,
Chief Assistant Attorney General, Lance E. Winters, Assistant
Attorney General, Noah P. Hill and David W. Williams, Deputy
Attorneys General, for Plaintiff and Respondent.

Defendant and appellant Lauren Walp pleaded no contest to assault with a deadly weapon and was sentenced accordingly. After she was sentenced, the trial court issued a protective order under Penal Code section 136.2.¹ She appeals from the order because the trial court lacked authority to issue it. The People concede. We agree and reverse the order.

BACKGROUND

In December 2014, Tim McMillan ran into Walp, who he hadn't seen in two years. Because Walp was down on her luck, McMillan let her spend the night at his place. The next day, they went to a bar to have a drink. Walp started a fight with the bartender and then with McMillan. She punched McMillan and hit him with a bottle. Then she hit him with a barstool. Walp grabbed McMillan's thumb, pulling it so hard it broke.

Based on these events, Walp was charged with, among others, assault with a deadly weapon (§ 245, subd. (a)(1)), and, on October 20, 2015, she pleaded no contest to that offense and admitted a great bodily injury allegation (§ 12022.7). That same day, she was sentenced to two years in prison and to three years under section 12022.7, subdivision (a), but the three-year term was stayed.

Thereafter, on November 18, 2015, the case was called for a restitution hearing. McMillan did not want restitution, but he did want a protective order. The court issued a criminal protective order for McMillan under section 136.2, based on a finding that Walp and McMillan knew each other. Walp was prohibited from harassing, striking, threatening, assaulting,

¹ All further undesignated statutory references are to the Penal Code.

following, stalking, molesting, destroying or damaging personal or real property, disturbing the peace, surveilling or blocking the movements of McMillan. She was ordered not to contact or to come within 100 yards of him. Defense counsel objected to the protective order because “criminal proceedings are no longer pending.” Counsel pointed out that Walp had already been sentenced and that this was not a domestic violence case. The court overruled the objection and issued the order, which remains in effect until approximately November 18, 2018.

This appeal followed.

DISCUSSION

To protect a witness or a victim, a trial court may issue a protective order in a criminal case. (§ 136.2; *People v. Ponce* (2009) 173 Cal.App.4th 378, 382.) “Under section 136.2 . . . , during the pendency of a criminal proceeding when the court has a ‘good cause belief that harm to, or intimidation or dissuasion of, a victim or witness has occurred or is reasonably likely to occur,’ the court is authorized to issue a restraining order.” (*People v. Selga* (2008) 162 Cal.App.4th 113, 118.) But because “the only purpose of orders under section 136.2 ‘is to protect victims and witnesses in connection with the criminal proceeding in which the restraining order is issued in order to allow participation without fear of reprisal,’ the duration of such an order ‘is limited by the purposes it seeks to accomplish in the criminal proceeding.’ [Citation.] That is, the protective orders issued under section 136.2 [are] operative only during the pendency of the criminal proceedings and as prejudgment orders.” (*Id.* at pp. 118-119; accord, *People v. Stone* (2004) 123 Cal.App.4th 153, 159.) A protective order, however, may be ordered against a defendant sentenced to prison when the defendant has been convicted of

domestic violence or as a condition of probation. (*Ponce*, at pp. 382-383; *People v. Robertson* (2012) 208 Cal.App.4th 965, 996; § 136.2, subd. (i)(1).)

Here, the trial court expressly found that this was “not a domestic violence case.” Moreover, there was no evidence that this was a domestic violence case. McMillan had not seen Walp for two years before inviting her to stay at his place, which he did because she was down on her luck. Also, the protective order could not have been imposed as a condition of probation, because probation was denied and Walp was sentenced to prison. We therefore conclude that because the protective order under section 136.2 was issued after judgment had been pronounced and Walp sentenced, the court had no authority to issue it. (*People v. Ponce, supra*, 173 Cal.App.4th at p. 382 [the limitation is jurisdictional].) The order must be stricken.²

Notwithstanding that the order is stricken, we note that the minute order of November 18, 2015 mistakenly states that the order was issued under section 646.9, subdivision (k). It was not issued under that section and therefore the minute order must be corrected.

² Although appellant asks us to order the abstract of judgment be corrected, the abstract of judgment in the record on appeal does not reflect that a protective order was issued.

DISPOSITION

The minute order dated November 18, 2015 shall be corrected to reflect that the protective order was issued under section 136.2 and not under section 646.9, subdivision (k). The protective order is reversed and stricken.

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ALDRICH, J.

We concur:

EDMON, P. J.

LAVIN, J.